

Decision 01-11-015 November 8, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Prototype Engineering, Inc., to transfer control of its passenger stage authority PSC-9025, pursuant to the provisions of § 851, et seq. of the California Public Utilities Code, to Polytech Enterprises, LLC, and to establish a Zone of Rate Freedom (ZORF) under § 454.2 of the Public Utilities Code.

Application 01-01-025  
(Filed January 17, 2001)

**O P I N I O N**

**A. Summary**

This decision grants the application to transfer a passenger stage corporation (PSC) certificate from Prototype Engineering, Inc. dba Shuttle 2000 (Transferor), a limited liability company, to Polytech Enterprises, LLC (Transferee), a limited liability company, under Pub. Util. Code § 851 et seq. Transferor filed this Application to seek Commission approval, on a *nunc pro tunc* basis, of the transfer of control of Transferor's PSC authority to Transferee. *Nunc pro tunc* approval is not available; however, in this instance, the transfer meets the limited Pub. Util. Code § 853 exemption. The timing of the transfer was not within the control of Transferor and Transferee and there was no attempt to subvert the authority of the Commission. We exempt the transfer from review but caution future applicants that § 853 treatment is available only in extraordinary circumstances and that we will decline to authorize transfers where the timing of the transfer is within the control of the applicant.

Transferee is authorized to establish a Zone of Rate Freedom (ZORF), pursuant to Pub. Util. Code § 454.2.

## **B. Discussion**

Transferor holds a certificate of public convenience and necessity to operate as a PSC, as defined in Pub. Util. Code § 226. The certificate authorizes Transferor to transport passengers and their baggage on an on-call, door-to-door, basis between Los Angeles International Airport (LAX), Burbank Airport (BUR), Long Beach Airport (LGB), Ontario Airport (ONT), Los Angeles Amtrak Station (Amtrak), Los Angeles/Long Beach Harbors (Harbors) and points in Los Angeles, Orange, Riverside, San Bernardino and Ventura counties. We granted this authority in Decision (D.) 94-10-010, as described in Appendix PSC-9025, attached to that decision.

Transferor filed this Application to seek Commission approval of the transfer of control of Transferor's passenger stage authority (PSC-9025) to Transferee. The Asset Purchase Agreement (Agreement), Exhibit E to the Application, indicates a closing date of November 9, 2000, for the purchase of the assets, two months before this Application was filed. Transferor agreed to sell its trade name, telephone numbers, and equipment. The total purchase price is \$29,000. Transferee will also assume all obligations under the leases for three vehicles operated by Transferor. Transferee seeks control of PSC-9025 to create a more attractive and viable business structure, increase operational flexibility, and promote affordable and safe transportation services for the public.

On April 9, 2001, Commission staff notified Transferor's representative that the Agreement did not include Transferor's passenger stage certificate. In an April 25, 2001 Addendum to the Purchase Agreement, Transferor included the PSC certificate in that Agreement.

On June 27, 2001, the assigned administrative law judge issued a ruling directing Transferor to file a response explaining why Transferor failed to seek Commission approval before transferring PSC-9025 and why a penalty should not be imposed. On July 12, 2001, Transferor filed a Response to Administrative Law Judge's Ruling and explained that Transferor intended to get out of the PSC business after LAX created a concessionaire operated transportation system that drove approximately thirty companies out of business. Transferor intended to sell its equipment and materials to pay creditors, but Transferor's employees decided to buy and stay in the business primarily to serve airports other than LAX. If Transferor had not transferred the certificate to Transferee when it did, Transferor would have abandoned that certificate.

Transferee also requests authority to establish a ZORF of \$20 above and below the authorized tariff fares and charges filed with the Commission. The minimum fare is \$5.

Exhibit F is Transferee's unaudited Balance Sheet as of December 31, 2000 that discloses assets of \$131,149 and liabilities of \$41,259.

Notice of filing of the application appeared in the Commission's Daily Calendar on January 22, 2001. No protest or response has been received.

### **C. Discussion**

Transferor and Transferee did not file this application in advance of the transfer. We recently declined to authorize retroactive approval of an acquisition under Pub. Util. Code § 854 and fined applicants for violating § 854.

(Re NetMoves Corp., D.00-12-053.) Pub. Util. Code § 851 similarly requires Commission authorization prior to transferring or in any way encumbering assets of the public utility or the transfer is void:

No public utility other than a common carrier . . . shall sell, lease, assign, mortgage, or otherwise dispose of or encumber the whole or any part of its railroad, street railroad, line, plant, system, or other property necessary or useful in the performance of its duties to the public, or any franchise or permit or any right thereunder, nor by any means whatsoever, directly or indirectly, merge or consolidate its railroad, street railroad, line, plant, system, or other property, or franchises or permits or any part thereof, with any other public utility, without first having secured from the commission an order authorizing it do to do. Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation made other than in accordance with the order of the commission authorizing it is void. . .

Transferor and Transferee now realize the possible implications of § 851, regret any violations and request our forgiveness for any possible violations. We must consider whether this transfer is void or whether any circumstances permit our approval of it.

The Commission has limited discretion to determine that asset transfers, among other transactions, need not be submitted to the Commission for pre-approval. Pub. Util. Code § 853(b) provides:

The Commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest.

This exemption applies to extraordinary circumstances and should seldom be used. (*E.g.*, *Re Pacific Gas and Electric Company* (1999) [D.99-02-062] \_\_ Cal.P.U.C.2d \_\_, \_\_, 1999 Cal.P.U.C. LEXIS 59, LEXIS p. 9.) Moreover, the public interest test in § 853 is not met by ordinary transactions that were completed

without Commission review by virtue of oversight or a business decision to ignore the requirements of the Public Utilities Code.

In this instance, the transfer meets the § 853 exemption. The timing of the transfer was not within the control of Transferor and Transferee and there was no attempt to subvert the authority of the Commission. Transferor would have abandoned the certificate absent the interest of a number of Transferor's employees in purchasing it. Further, Transferor would have been among the approximately thirty companies that went out of business as a result of LAX's concessionaire operated transportation system. Under these circumstances—where a public authority has in effect forced the transfer of Shuttle 2000 to parties already engaged in the business, it would not be in the public interest to void the transfer. Instead, we will approve the transfer but caution future applicants that we will decline to authorize transfers where the timing of the transfer is within the control of the applicant.

In general, the primary question to be determined in a transfer proceeding is whether the proposed transfer would be adverse to the public interest. (Re Radio Paging Co., (1966) 65 CPUC 635.) The public interest is served by the continuation of Shuttle 2000 under new owners with a different and probably more viable business plan. In addition, Transferor's employees are not similarly situated to new entrants and, because of safety issues, are already subject to Commission scrutiny. Thus the application of § 851 may be excused here. However, we stress that this conclusion is based on the unique facts of this situation and shall not establish any precedent.

Other than the requested ZORF, no changes in existing rates or services are proposed. Shuttle 2000 will compete with other PSCs, taxicabs, limousines,

buses, and automobiles in its service area. The establishment of the ZORF is fair and reasonable.

Under the California Environmental Quality Act (CEQA) and Rule 17.1 of the Commission's Rules of Practice and Procedure, we must consider the environmental consequences of projects that are subject to our discretionary approval. (Public Resources Code § 21080.) Since we are granting an exemption from § 851 review, CEQA review is not required.

In Resolution ALJ 176-3057 dated February 9, 2001, the Commission preliminarily categorized this application as ratesetting, and preliminarily determined that hearings were not necessary. Based on the record, we conclude that a public hearing is not necessary, nor is it necessary to alter the preliminary determinations in Resolution ALJ 176-3057. This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is being waived.

### **Findings of Fact**

1. Transferor is operating as a PSC pursuant to a CPCN described in Appendix PSC-9025 of D.94-10-010.
2. Transferor has agreed to transfer the CPCN described in PSC-9025 to Transferee.
3. Transferee also requests authority to establish a ZORF of \$20 above and below the authorized tariff fares and charges filed with the Commission. The minimum fare is \$5.
4. No protest to the application has been filed.
5. Transferor and Transferee did not file this application in advance of the transfer.

6. Transferor intended to abandon its operations as a PSC after LAX created a concessionaire operated transportation system that drove approximately thirty companies out of business.

7. If Transferor had not transferred the certificate to Transferee when it did, Transferor would have abandoned that certificate.

8. Pub. Util. Code § 853(b) gives the Commission limited discretion to determine that asset transfers, among other transactions, need not be submitted to the Commission for pre-approval.

### **Conclusions of Law**

1. The proposed transfer is in the public interest and should be authorized.
2. The request for a ZORF should be granted.
3. Before Transferee changes any fares under the ZORF authorized below, Transferee shall give this Commission at least 10 days' notice. The filing of ZORF fares in the tariff should show between each pair of service points the high and low ends of the ZORF and the then currently effective fare.
4. Since the matter is uncontested, the decision should be effective on the date it is signed.

Only the amount paid to the State for operative rights may be used in rate fixing. The State may grant any number of rights and may cancel or modify the monopoly feature of these rights at any time.

## **O R D E R**

### **IT IS ORDERED** that:

1. Within 120 days from the effective date of this decision, Prototype Engineering, Inc. (Transferor), a limited liability company, may transfer the

operative rights specified in this application to Polytech Enterprises, LLC (Transferee), a limited liability company, subject to the conditions contained in the following paragraphs.

2. Upon completion of sale and transfer, Transferee is granted a certificate of public convenience and necessity (CPCN), authorizing it to operate as a passenger stage corporation (PSC), as defined in Pub. Util. Code § 226, to transport passengers and their baggage between the points and over the route set forth in Appendix PSC -13879.

3. Transferee shall:

- a. File a written acceptance of this certificate within 30 days after this order is effective.
- b. Establish the authorized service and file tariffs and timetables within 120 days after this order is effective.
- c. Adopt Transferor's tariffs and timetables, state in them when the service will start, make them effective 10 or more days after this order is effective and allow at least 10 days' notice to the Commission.
- d. Comply with General Orders Series 101, 104, and 158, and the California Highway Patrol (CHP) safety rules.
- e. Comply with the controlled substance and alcohol testing certification program pursuant to Pub. Util. Code § 1032.1 and General Order Series 158.
- f. Maintain accounting records in conformity with the Uniform System of Accounts.
- g. Remit to the Commission the Transportation Reimbursement Fee required by Pub. Util. Code § 423 when notified by mail to do so.
- h. Comply with Pub. Util. Code §§ 460.7 and 1043, relating to the Workers' Compensation laws of this state.
- i. Enroll all drivers in the pull notice system as required by Section 1808.1 of the Vehicle Code.

4. Transferee is authorized under Pub. Util. Code § 454.2 to establish a ZORF of \$20 above and below the tariff fares filed with the Commission. The minimum one-way adult fare is \$5.

5. Transferee shall file a ZORF tariff in accordance with the application on not less than 10 days' notice to the Commission and to the public. The ZORF shall expire unless exercised within 120 days after the effective date of this order.

6. Transferee may make changes within the ZORF by filing amended tariffs on not less than 10 days' notice to the Commission and to the public. The tariff shall include between each pair of service points the authorized maximum and minimum fares and the fare to be charged.

7. In addition to posting and filing tariffs, Transferee shall post notices explaining fare changes in its terminals and passenger-carrying vehicles. Such notices shall be posted at least ten days before the effective date of the fare changes and shall remain posted for at least 30 days.

8. Transferee is authorized to begin operations on the date that the Rail Safety and Carriers Division mails a notice to Transferee that its evidence of insurance and other documents required by Ordering Paragraph 3 have been filed with the Commission and that the CHP has approved the use of Transferee's vehicles for service.

9. The CPCN granted to Transferor by Decision 94-02-033 is revoked on the date Transferee is notified that it may commence operations as provided in Ordering Paragraph 8.

10. Before beginning service to any airport, Transferee shall notify the airport's governing body. Transferee shall not operate into or on airport property without authority from the airport's governing body.

11. The CPCN to operate as PSC - 13879, granted herein, expires, unless exercised within 120 days after the effective date of this order.
12. The Application is granted as set forth above.

13. This proceeding is closed.

This order is effective today.

Dated November 8, 2001, at San Francisco, California.

LORETTA M. LYNCH

President

RICHARD A. BILAS

CARL W. WOOD

GEOFFREY F. BROWN

Commissioners

Commissioner Henry M. Duque, being necessarily  
absent, did not participate.

CERTIFICATE  
OF  
PUBLIC CONVENIENCE AND NECESSITY  
AS A PASSENGER STAGE CORPORATION  
PSC-13879

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Showing passenger stage operative rights, restrictions,  
limitations, exceptions, and privileges

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All changes and amendments as authorized by  
the Public Utilities Commission of the State of California  
will be made as revised pages or added original pages.

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Supersedes the authority heretofore granted to  
Prototype Engineering, Inc, a corporation, by D.94-02-033.

## **I N D E X**

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SECTION I. GENERAL AUTHORIZATIONS, RESTRICTIONS,  
LIMITATIONS, AND SPECIFICATIONS.

This certificate supersedes all passenger stage operative authorities granted to Prototype Engineering, Inc., a corporation.

Polytech Enterprises, LLC, a liability company, by the certificate of public convenience and necessity granted by the decision noted in the foot of the margin, is authorized to transport passengers and their baggage on an “on-call” basis, between points and places as described in Section IIA, and the points described in Section IIB, over and along the route described in Section III, subject however, to the authority of this Commission to change or modify this authority at any time and subject to the following provisions:

- a. When a route description is given in one direction, it applies to operation in either direction unless otherwise indicated.
- b. The term “on-call,” as used, refers to service which is authorized to be rendered dependent on the demands of passengers. The tariffs shall show the conditions under which each authorized on-call service will be provided, and shall include the description of the boundary of each fare zone, except when a single fare is charged to all points within a single incorporated city.
- c. No passengers shall be transported except those having a point of origin or destination as described in Section IIB.
- d. This certificate does not authorize the holder to conduct any operation on the property of any airport unless such operation is authorized by the airport authority involved.

## SECTION II. SERVICE AREA.

- A. 1. Counties of Los Angeles and Orange.
2. All points within the geographical limits of the following cities and communities in San Bernardino County:  
Alta Loma, Brynmawr, Bloomington, Chino, Colton, Etiwanda, Fontana, Grand Terrace, Highland, Loma Linda, Montclair, Ontario, Parker Dam/Pioneer Town, Rancho Cucamonga, Redlands, Rialto, San Bernardino and Upland.
3. All points within the geographical limits of the following cities and communities in Riverside County:  
Corona, Glen Ivy, Lake Elsinore, Mira Loma, Norco, Perris, Riverside and Sun City.
4. All points within the geographical limits of the following cities and communities in Ventura County:  
Camarillo, Filmore, Moorpark, Oakview, Ojai, Oxnard, Piru, Port Hueneme, Point Mugu, Santa Paula, Simi Valley, Somis, Thousand Oaks and Ventura.
- B. 1. Los Angeles International Airport.
2. Burbank Airport.
3. Long Beach Airport.
4. Ontario International Airport.
5. John Wayne Airport.
6. Los Angeles AMTRAK Station.
7. Los Angeles and Long Beach Harbors.

## SECTION III. ROUTE DESCRIPTION.

Commencing from any point as described in Section IIA, then over the most convenient streets, expressways, and highways to any point described in Section IIB.